



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

VICTORY MEDICAL CENTER

**Respondent Name**

TEXAS MUTUAL INSURANCE CO

**MFDR Tracking Number**

M4-15-0068-01

**Carrier's Austin Representative**

Box Number 54

**MFDR Date Received**

September 8, 2014

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "According to the State Fee Schedule, there are two ways an inpatient claim can be paid. First would be 143% of the Medicare DRG if we didn't want separate reimbursement for our implants, or if there were no implants used in the case. The second way is 108% of the Medicare DRG allowed amount along with the cost plus 10% for the implants up to \$2,000.00 of add-on. Due to a change in our Operating Cost-to-Charge and Capital-Cost-To-Charge Ratios, we are requesting payment at the 108% of the Medicare DRG."

**Amount in Dispute:** \$8,315.38

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Medicare has assigned facility specific amounts to those facilities participating in its IPPS. The Medicare certification number, which Victory does not have, identifies those facility specific amounts. The number is required in the Medicare IPPS, which the Rule directs carriers to use when calculating accurate payments. The IPPS PRICER calculates the facility specific amounts referenced in Rule 134.404(f). The PRICER requires a facility specific Medicare certification number. Victory wants Texas Mutual to substitute another San Antonio hospital's Medicare facility specific IPPS data (Innova Hospital), i.e. the labor wage index and then pay 143% of the DRG amount. Nothing in the Rule or the preamble supports Victory's proposed substitution of Medicare numbers. Further, Victory did not specifically request separate implant reimbursement. For these reasons, the requestor is not entitled to reimbursement based on Rule 134.404. No additional payment is due."

**Response Submitted by:** Texas Mutual Insurance Company

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 12, 2013 – December 15, 2013	In Patient Facility Charges	\$8,315.38	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
3. 28 Texas Administrative Code §134.404 sets out the Inpatient Hospital Facility Fee Guideline.
4. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.

5. The services in dispute were reduced/denied by the respondent with the following reason codes:
- CAC-W1 – Workers Compensation State Fee Schedule Adjustment.
  - CAC 97 – The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
  - CAC 217 – Based on payer reasonable and customary fees, no maximum allowable defined by legislated fee arrangement.
  - 217 – The value of this procedure is included in the value of another procedure performed on this date.
  - 305 – The implant is included in this billing and is reimbursed at the higher percentage calculation.
  - 426 – Reimbursed Fair and Reasonable.
  - 193 – Original payment decision is being maintained. Upon review, it was determined that the claim was processed properly.

### **Issues**

1. What is the applicable rule for determining reimbursement for the disputed services?
2. Did the Requestor submit sufficient documentation to meet the requirements outlined in 28 Texas Administrative Code §134.1?
3. Is the requestor entitled to additional reimbursement?

### **Findings**

1. The requestor seeks reimbursement for inpatient hospital services rendered from December 12, 2013 through December 15, 2013. The Requestor billed the Respondent \$164,169.94, received payment from the Respondent in the amount of \$23,445.58, and is requesting an additional payment in the amount of \$8,315.38. The Requestor seeks reimbursement under 28 Texas Administrative Code §134.404. The Requestor acknowledges that the hospital is not a Medicare certified hospital and requests reimbursement by using the Medicare Provider Number of the “sister hospital in San Antonio...”

Per 28 Texas Administrative Code §134.404 (f)(1), “(f) The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors as published annually in the *Federal Register*. The following minimal modifications shall be applied. (1) The sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by: (A) 143 percent; unless (B) a facility or surgical implant provider requests separate reimbursement in accordance with subsection (g) of this section, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 108 percent.”

The Division finds that the provisions of Per 28 Texas Administrative Code §134.404 (f) (1) do not apply, as the facility does not have a “Medicare facility specific amount.” As a result, this dispute relates to inpatient hospital services with reimbursement subject to 28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626. 28 Texas Administrative Code §134.1 requires that, in the absence of an applicable fee guideline or a negotiated contract, reimbursement for health care not provided through a workers’ compensation health care network shall be made in accordance with subsection §134.1(f) which states, that “Fair and reasonable reimbursement shall: (1) be consistent with the criteria of Labor Code §413.011; (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available.”

Former Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

2. 28 Texas Administrative Code §133.307(c)(2)(O), requires the requestor to provide “... documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline) when the dispute involves health care for which the division has not established a maximum allowable reimbursement (MAR) or reimbursement rate, as applicable.”

28 Texas Administrative Code 134.1(f) (2) requires that “fair and reasonable reimbursement” shall “...ensure that similar procedures provided in similar circumstances receive similar reimbursement...” Review of the submitted documentation finds that:

- In support of the requested reimbursement methodology, the requestor seeks reimbursement by using the Medicare Provider Number of the “sister hospital in San Antonio...” The requestor seeks the following by using “...By using the Medicare Provider Number of [provider number], which is the provider number for our sister hospital in San Antonio, the total billed amount of \$164,169.94 and the 2013-2014 CMS pricer with the Operating Cost-To-Charge Ratio of 0.254 and a Capital Cost-To-Charge Ratio of 0.023, DRG 472 allowed amount is \$23,303.03. One hundred and forty-three percent of \$23,303.03 is \$33,323.33. Our total reimbursement for the services rendered to this patient should be \$33,323.33.”
  - The requestor did not submit documentation to support the Medicare payment calculation for the services in dispute.
  - The Division disagrees that the fee guidelines as set forth in §134.404 are “presumptively fair and reasonable reimbursement under the law.” No documentation was found to support such a presumption under law.
  - While the Division has previously found that Medicare patients are of an equivalent standard of living to workers’ compensation patients (22 *Texas Register* 6284), Texas Labor Code §413.011(b) requires that “In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d) ... This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services.”
  - The requestor did not discuss or present documentation to support how applying the proposed payment adjustment factors as adopted in 28 Texas Administrative Code §134.404, effective for dates of service on or after March 1st, 2008, would provide fair and reasonable reimbursement for the disputed services during the time period that treatment was rendered to the injured worker.
  - The requestor did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support the alternative requested reimbursement.
  - The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.
3. The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1(f) (2). Thorough review of the submitted documentation finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has failed to establish that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
January 15, 2016  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §141.1(d).